IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3103 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NARMADA CEMENT COMPANY LTD. - Petitioner(s)
Versus
UNION OF INDIA & ORS. - Respondent(s)

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Appearance :
Shri Manish R. Bhatt for Petitioner(s).
Ms. Megha Jani for Respondent Nos.1-3.
None for Respondent Nos. 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/04/2007

ORAL JUDGMENT

The short dispute in the present matter is that the petitioners, after obtaining certain orders, received the coal through the

Eastern Railway, who were booking the shipment from West Mudidhi Colliery to Rajula City destination. The consignors loaded the wagons and Railway Receipt Nos. E-990161 and E-990162 were issued by the Railways. After the rakes/wagons were loaded, it was found that the wagons were overloaded by 3.40 metric tonnes. The Railways, in accordance with Rule 161A, charged the penal fare/freight amount from the petitioner.

2. It appears that at Kankaria, where the goods were reweighed, it was found that the overloading was to the extent of 106.60 metric tonnes. The Railways thereafter made a demand of Rs.4,10,785/- by way of penal freight. The petitioner made representations clearly stating that the petitioners were not informed by the Railways at the time of reweighment of the shipment, therefore, under the circumstances and as it was not the case of the Railway Authorities that the weighing machine, on which the first weighment was made, was defective, the petitioners were not liable to pay anything. The petitioners' representations were rejected, therefore, they are now before this Court.

3. In absence of any counter-affidavit by the other side, I find no difficulty in holding that the petitioners were not given opportunity of representation at the time of reweighment. However, it is not the case of the petitioners that the reweighment was a fraudulent action against the interest of the petitioners. In a case like present, the petitioners could always file a civil suit for refund of the money, but, instead they have preferred to come to this Court.

4. This Court under Article 226 of the Constitution of India, ordinarily, would not make any enquiry into the question of the disputed facts and under the circumstances, the party asserting a fact has to prove

the fact at least to some reasonable extent. In the present case, the petitioners at least could produce the documents to show that what they received was more by 3.40 metric tonnes and not by 106.60 metric tonnes and with this *prima facie* proof, the Court could record a finding in favour of the petitioners. Unfortunately, the records which are available with the petitioners have not been filed. Therefore, it is not possible for this Court to record any finding on the question of the disputed facts.

5. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

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